

November 8, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON ADMINISTRATIVE CONDITIONAL USE PERMIT APPEAL

SUBJECT: Department of Development and Environmental Services File No. **L99AC010**

KIDS R' SPECIAL DAYCARE

Appeal from Administrative Conditional Use Permit Decision

Location: 13842 – 100th Avenue Northeast

Applicant: Alina Christ, *represented by*
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SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:

Deny the appeal

Department's Final Recommendation:

Deny the appeal

Examiner's Decision:

Deny the appeal

EXAMINER PROCEEDINGS:

Remanded Hearing Opened: September 12, 2000
Remanded Hearing Closed: September 12, 2000

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Landscaping
- Access
- Setbacks
- Conditional use
- Compatibility
- Noise

SUMMARY:

Approves conditional use permit authorizing establishment of child care facility, subject to restrictive conditions.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **Background.** On January 7, 2000 the Department of Development and Environmental Services (“DDES” or the “Department”) issued a conditional use permit decision, subject to conditions, approving the Kids R’ Special Childcare facility at 13842 – 100th Avenue Northeast in the Kirkland vicinity of unincorporated King County. That decision was appealed by the present Appellants. Following a pre-hearing conference on that appeal, Examiner James N. O’Connor ordered the case remanded to the Department for further review, citing “a substantial modification” to the proposal. Subsequently, the Department issued a new report and decision on May 26, 2000, also approving the (revised) site development plans. On June 12, 2000, Sherie Shams and Sam Shams, together with Lori Newman and Chris Newman and others¹, the issues of review and pre-hearing disclosure schedule for that appeal were set by this Examiner at a pre-hearing conference on July 20, 2000.²

¹ The Appellants, represented by W. Theodore Vander Wel, are Sherry and Sam Shams, Laurie and Chris Newman, Cheryl Hart and Tom Becker, Chuck and Michelle Ryan, Neil Humphrey, Michael and Sally Clapp, Ryan and Bethany Leland, Bob and Barbara McConnell, Mike and Suzanne Pruett and Clark Thomas. All are neighboring residential property owners located east of the subject property on either Northeast 139th Street or 101st Place Northeast.

² The pre-hearing conference also addressed the appeal of David M. Haynes. That appeal was subsequently withdrawn prior to hearing.

In response to the requirements of the pre-hearing conference, the Department issued two preliminary reports to the Examiner; first, on August 29, 2000 (Exhibit No. 19); then, an expanded and revised version issued on September 19, 2000 (Exhibit No. 1). The Department's final recommendation is discussed further in Finding No. 3, below.

2. **General Findings.** The proposed development includes a 2,742 square foot modular building to be used as a child care facility. A residence on the property is presently used in part for that purpose. Approximately 2,212 additional square feet of impervious area will provide driveway, parking and turnaround area, (consistent with King County Fire Marshall requirements). Around the south, east and north perimeters, approximately 9,470 square feet of "Type 1" landscaping is proposed. Some of that landscaping, in the form of laurel hedges, already exists along the north and south boundaries only. In addition, the existing photinia hedge along the 100th Avenue Northeast property frontage is proposed to be enhanced sufficient to meet the "Type 3" landscape standard. The facility would accommodate 35 students although the Applicant expects that only 10 or 12 would play out doors at any given time. Children to be served by the facility will range in age from infant to pre-school. Accommodations and operations of daycare facilities are regulated by the Washington State Department of Social and Health Services.

The subject property and neighboring properties to the east and north are classified R-6 and are developed as single-family residential (six dwelling units per acre). An apartment townhouse development abuts the subject property along its south boundary. Commercial properties, including drive-through restaurants, a supermarket and other neighborhood business activities are located immediately south of the townhouse apartment development. The subject property fronts on 100th Avenue Northeast, a principle arterial. Access is proposed to be obtained from that arterial street. The subject property comprises 37,500 square feet, roughly five times the minimum area requirement of the zone.

3. **Department Decision and Recommendation.** The Department, in its May 26, 2000 decision, granted approval to the requested conditional use permit, subject to the development of obtaining a building permit and any other necessary permits; compliance with the proposed site plan; use limits of 35 children, 9 employees per day with operation between 7 a.m. and 5:30 p.m., Monday through Friday. Parking spaces to be provided in sufficient number to accommodate one space for each full-time employee plus a minimum of two spaces for child drop-off and pick-up.³ In its decision the Department concludes that 8 parking spaces are required, based upon the Applicant's assertion that the facility will employ 6 full-time and 3 part-time employees. The Department's decision also requires Type 1 landscaping along the north, east and south property lines as well as a 10-foot wide Type 3 landscape strip along the property frontage. The May decision also required the Applicant to provide Washington State licensing information regarding the facility within 45 days of the decision date, and set a 4 year time limit for exercising the approval "by obtaining permits."

Subsequent to the appeal and upon hearing argument from the parties, the Department recommended to the Examiner the following additional conditions of approval:

³ The site development plans call for 8 regular parking spaces plus a handicap van parking space—all in addition to the parking provided in the northwest corner of the subject property, an existing 2-car carport as well as an un-demarcated parking area approximately 75 feet long.

- The gate located in the northeast corner of the property shall be eliminated as a point of access for the subject property. Access for the daycare facility shall be restricted to the new commercial roadway off 100th Avenue Northeast. If the daycare use of the property/modular building ceases, then at such time, other forms of access may be applied for.
 - The play area as shown on the approved site plan, shall be fenced with a minimum 6-foot solid wood fence to prevent children/use of the property from entering the required 20-foot landscape buffer and to increase screening.
 - Evergreen and deciduous trees planted in the 20-foot wide Type 1 landscape buffer shall be a minimum of 6 feet in height and the east property line and the east property line shall be fenced with a minimum 6-foot solid wood fence.⁴
 - Stationary play equipment shall be located in the south portion of the play area and such equipment shall not extend beyond the northern edge of the modular building.
 - Outside activities shall not be allowed prior to 9 a.m. and not later than 3 p.m. No more than 15 children shall be allowed in the play area at one time.
4. **Applicant Response.** The Applicant accepts the Department's recommendation (including the May 26, 2000 decision conditions of approval) as described in Finding No. 3, preceding, *except* for the following:
- a. The Applicant opposes the 3 p.m. recreation/play time limit, arguing that it would conflict with State DSHS standards by unreasonably restricting outdoor recreation time; that it would unnecessarily interfere with operational requirements such as nap time and class time (after which recreation is appropriate); and, that it would require children to wait for parental pick-up indoors even though they had completed their curricula for the day.
 - b. The Applicant also opposes the recommendation to require relocation of existing stationary play equipment to the south portion of the play area extending no further north than the northern edge of the modular building. Again, the Applicant suggests that locating the play area adjacent to the parking area could conflict with State DSHS safety standards.
 - c. Finally, the Applicant opposes the Department's recommendation to increase the height of trees at planting within the Type 1 landscape buffer, arguing that the 6-foot requirement would be prohibitively costly. The tree plantings are proposed to be 5 feet tall. The landscape plan calls for approximately 29 Austrian Black Pine and 25 Western Red Cedar, augmented by numerous shrubs and groundcovers.

⁴ In the northeast corner of the property, the Applicant's site plan and landscape plan call for a 30-foot wide Type 1 buffer. The Applicant proposes 5-foot tall trees.

5. **The Appeal.** The Appellants (see Footnote No. 1) seek reversal or modification of the proposed daycare facility on the following grounds:

- a. Citing KCC 21A.16.030.B.2, KCC 21A.38.150, KCC 21A.06.265.B, KCC 21A.4.080.A and KCC 21A.44.040.A, the Appellants argue that the proposed “Daycare II” use is incompatible with the neighboring residential uses of the neighboring property owners. In particular, they regard the noise of playing children as disruptive to the “current peaceful residential setting” of the neighborhood. Citing KCC 21A.44.040, KCC 21A.12.220.B, KCC 21A.18.070.D and KCC 21A.08.050.B.5, the Appellants argue that the new facility will be located too close to petitioner’s residential use and, in fact, will violate King County Code setback requirements.
- b. Through the course of hearing, the Appellants argued that the proposed Daycare II facility is not even permitted in the R-6 classification. This position is based upon KCC 21A.08.050.A, “general services land uses.” This code section, a matrix, indicates that a Daycare II facility in the R-1 through R-8 zoning classifications is authorized, subject to the following designations: “P,” “8” and “C.” The “P” says that it is permitted. However, the “C” indicates that a conditional use permit is required. And, the “8” refers to KCC 21A.08.050.B.8 which states:

Only as a re-use of a public school facility subject to the provisions of KCC 21A.32, or an accessory use to a school, church, park, sport club or public housing administered by a public agency, provided: [from here forward, KCC 21A.08.050.B.8 describes outdoor play restrictions, hours of operation and access requirements].

The confusion appearing to arise from these designations is addressed and resolved in Conclusion No.1, on pages 7 and 8 of this report and decision.

- c. KCC 21A.16.030 groups land uses “in order to facilitate the application of this chapter.” KCC 21A.16.030.B.2 identifies “commercial development” as including those uses stated in KCC 21A.08.050 (except for certain uses not subject to the instant review). “This chapter” as used in KCC 21A.16.030 means chapter 16 of King County Code Title 21A titled “Development Standards—Landscaping and Water Use.” The Appellants argue, however, that Daycare II *constitutes* a commercial activity pursuant to KCC 21A.16.030.B.2. KCC 21A.08.050 describes Daycare II as an “institutional use” or “personal service” use.
- d. In addition, Shams, Newman *et al* appealed to prohibit access to the subject property from Northeast 139th Street. Subsequent site plan revision and DDES Recommended Condition No. 8 would eliminate/prohibit neighborhood access at that location.
- e. Ultimately, of course, all issues, including design placement issues, (such as gate location, playground location, building location, noise, operating hours and so on), must be weighed against the conditional use permit criteria established by KCC 21A.44.040.

In pre-hearing conference, Respondent/Applicant Kids R' Special challenged the timeliness of those issues regarding residential incompatibility and setback violation. The Examiner later ruled that those issues were inherent in the initial appeal which was filed timely.

6. **Haynes Appeal.** The appeal of David Haynes was withdrawn. Regarding Northeast 139th Street access, that appeal duplicated the Shams, Newman *et al* appeal. It also expressed concern regarding individual parking stall size, an issue that will be reviewed by the King County Building Services Division prior to building permit issuance.
7. **SEPA.** Pursuant to the State Environmental Policy Act (SEPA), the Department determined that the subject request for a conditional use permit is “categorically exempt” from threshold determination requirements pursuant to Washington Administrative Code (WAC) 197-11-305. No party challenged that determination. The SEPA review record is incorporated in this administrator’s appeal review record.
8. **Code Compliance.** The following dimensional standards contained in the King County Zoning Code are relevant:

- a. **Non-residential use standards.** KCC 21A.12.200 establishes review standards for “non-residential land uses in residential zones.” Those standards address impervious surface coverage (not to exceed 70% in an R-6 zone); building and structure setbacks (no closer than 30 feet to any property line); parking areas location (outside of required landscape area); accessibility (from at least one public street); height (conforming to the R-6 zone); and illumination (no direct rays of light projected into neighboring residences or onto any street right-of-way).

The proposed site plan conforms to all of these requirements. The proposed modular building will satisfy the setback limits on structures and projections established by KCC 21A.12.170.

- b. **Landscape standards.** The Applicant proposes landscaping consistent with KCC 21A.16.040.A (Type 1) which King County typically requires between residential and non-residential areas. KCC 21A.16.040.A requires primarily evergreen trees and shrubs (between 70% and 90% evergreen trees); trees located “no more than 30 feet apart on center”; and evergreen shrubs faced no more than 8 feet apart on center. Neither the Department nor the Appellants have indicated noncompliance with the KCC 21A.16.040 criteria. At 10 feet on center in double offset rows, the evergreen plantings in this proposal exceed the minimum standard set by KCC 21A.16.040. However, the Appellants argue that, due to topography, the landscaping along the east boundary of the subject property will fail to meet its objective, at least in the near term. The footprint elevation of the proposed modular building is approximately 3 feet higher than the east boundary fence line base elevation. See topographic map prepared by Northshore Land Surveying contained in Exhibit No. 15. Due to that elevation drop across the easternmost 30 feet of the subject property, the Appellants ask that larger evergreen trees be planted. Responding, the Department recommends requiring 6-foot tall cedar and Austrian Black

Pine instead of the Applicant's proposed 5-foot tall trees. In the view of the Appellants, that solution also fails to adequately screen the modular building from neighboring residential properties.

9. **Noise.** Ten to twelve children will play outdoors, supervised by staff, periodically through the day. This number of children playing outdoors will not change from present Daycare I use, because the children will rotate recreation time in shifts through the day. And, of course, not all of the enrolled children will play outside because a portion will be infants. Appellants argue that the sound of children playing is "oppressive" and incompatible with the residential character of the neighborhood. Taped recordings and sound pressure readings in evidence suggest that the sound of the children playing will be higher, and distinguishable from, the ambient noise. Ambient noise in this location includes the sounds emanating from the multi-family and commercial uses (supermarket, fast food drive-through, etc.) to the south, 100th Avenue NE and Juanita-Woodinville Way NE to the east and west (both arterials) and interstate freeway I-405 to the east. Other sounds which may exceed the ambient levels in this location include barking dogs, lawn mowers, leaf blowers and so on.
10. **Operating Hours.** The Department recommends requiring all children to be indoors from 3:00 p.m. until closing, a measure which the Applicant opposes. The motivation of the Department in making this recommendation is unclear because, presumably, a child at 2:30 p.m. is no more or less noisy than at 3:30 p.m. The Applicant argues that this requirement, if enacted, would interfere with recreation period rotation (and therefore risk compliance with DSHS standards which require a minimum amount of recreation time each day). The Appellants, too, noted that it would be difficult to meet the recreation standards for all 35 children with or without the 3:00 p.m. time limit. However, as noted earlier in these findings, a portion of the Daycare II population will be infants and will not recreate outdoors.
11. Any portion of any of the following conclusions that may be construed as a finding is incorporated here by this reference.

CONCLUSIONS:

1. KCC 21A.08.020.G explains the confusion regarding interpretation of the KCC 21.08 land use matrix (described in Finding No. 5.b, above). It provides for "letter-number combinations," stating:

If more than one letter-number combination appears in the box at the intersection of the column and the row, the use is allowed in that zone subject to different sets of limitations or conditions, depending on the review process indicated by the letter, ...

On close examination of the KCC 21A.08.050 matrix, we find not three use regulating designations (P, 8 and C) as argued; but rather, only two ("P8" and "C")—alternative "letter-number" combinations as described by KCC 21A.08.020. Thus, there are two ways to allow a

Daycare II facility in the R-1 through R-8 zones. First, such a facility may be permitted pursuant to the “P8” control. That is, as a re-use of a public school facility or as an accessory use to a school, church, park, sport club or public housing administered agency.⁵ Alternatively, a Daycare II facility may be permitted pursuant to the “C” control—that is, subject to a conditional use permit. This explanation is provided by KCC 21A.020.D.⁶ For the reasons discussed in this conclusion, then, the argument that the proposed Daycare II use is not even permitted in this zoning classification must be rejected.

2. The proposed use satisfies the dimensional standards and criteria that apply. See Finding No. 8.
3. The principle issues forwarded by the Appellants concern the compatibility standards contained in KCC 21A.44.040, particularly regarding visual compatibility and noise.
 - a. KCC 21A.44.040 does not directly address “noise” as a review standard. It addresses “character and appearance”; “neighborhood circulation”; “physical characteristics of the subject property”; “time modifications of standards to appropriate impact mitigations”; “health and safety”; “pedestrian and vehicular traffic”; and, “adequate public facilities for services.” “Noise” is not mentioned. By stretching one’s interpretation of the conditional use permit criteria, one might pin the “noise” concern on “health and safety” (KCC 21A.44.040.E) or on the admonition not to “discourage the permitted development or use of neighboring properties” (KCC 21A.44.040.B).

The evidence regarding the “noise” issue does not comport with either criterion. This is not a dog pound or a metal tooling operation. It is a daycare facility for 35 human children. The record contains no evidence that, however distasteful it may be to the Appellants, the “noise” generated by a dozen or so playing children constitutes a hazard to health and safety. This conclusion is buttressed by KCC 12.94.010.A.7 which exempts the sound of un-amplified human voice(s) from King County regulatory control. It is further supported by the KCC 21A.08.050.A matrix provision which permits elementary schools and middle/junior high schools in the R-1 through R-8 zoning classifications *outright*; that is, without any conditional use review whatever.

For the same reasons, the criterion that prohibits the “discouragement of use or development” of neighboring properties will not be used to reject or modify the proposed development based upon the “noise” issue. It would be wholly unfair to conclude that a Daycare II facility located adjacent to single-family residential properties would “discourage use or development of those properties” when a much larger concentration of children could be permitted in a public school outright.

⁵ A sufficient portion of the actual language to derive this interpretation is quoted in Finding No. 5.b on page 6 of this report and decision.

⁶ “If the letter ‘C’ appears in the box at the intersection of the column and the row, the use is allowed subject to the conditional use review procedures specified in KCC 21A.42 and the general requirements of the code.”

- b. The visual compatibility of the proposed building⁷ and property use, visual compatibility with the surrounding neighborhood will be achieved in a variety of ways. First, the building is only one story. Second, it has a “pitched roof” similar to most single-family residential homes (although it lacks eaves). Third, it is painted in soft “earth tones” unlike many (more garish) commercial facilities. Fourth, it is buffered from neighboring properties by a system of 6-foot fences and intense landscaping. The landscaping is up to four times more dense than required by code, with 10-foot on center spacing, rather than 40-foot on center spacing required by KCC 21A.16.040. In fact, the tree spacing is so dense that it probably will have to be thinned out in several years. Admittedly, the landscape height and density will not provide the Appellants immediate satisfaction. Even these rapidly growing trees in this favorable climate will take a few years to achieve the purposes of the Class 1 landscape standard.

Larger trees would be prohibitively costly and unduly burdensome. The “unduly burdensome” conclusion becomes all the more supportable when one realizes the unusual density which is proposed to be planted within the 20 to 30 foot-wide buffer area. The topographical concerns of the Appellants⁸ is also adequately addressed by the width, density and capacity for growth contained in the proposed landscape buffers.

4. The hearing record contains no evidence that the proposed Daycare II facility and operation will contradict the standards that regulate conditional use permit issuance as stated in KCC 21A.44.040. As described in the preceding finding, the conditional uses are designed in a manner which is compatible with the character and appearance of development in the vicinity of the subject property. The location, size and height of the buildings, structure, walls, fences and screening vegetation will not hinder neighborhood circulation or discourage the permitted uses of neighboring properties. The conditional use is designed in a manner that is compatible with the physical characteristics of the subject property. To the extent grading and clearing has been required, the proposed landscaping amply compensates and mitigates. The Applicant has met or exceeded applicable standards in every category. The record shows no health and safety injury resulting or likely to result from the proposed use.
5. Both pedestrian and vehicular traffic have been excluded from Northeast 139th Street. In the long term, removing the pedestrian gate may be problematic for parents in the neighborhood who seek to walk their children to the daycare facility from nearby homes. However, presently, no children from Northeast 139th Street or 101st Avenue Northeast attend this facility in its smaller “Class I” format. For that reason, the Applicant should be allowed to remove the pedestrian gate access to NE 139th Street.
6. Adequate public facilities and services are available; or, at least, the hearing record contains no evidence to the contrary. Finally, ingress/egress from 100th Avenue Northeast and internal circulation fully comply with the applicable standards.

⁷ We know that the building is already located on the property. However, insofar as the conditional use is concerned, it is a “proposed” building.

⁸ The subject property, as noted in preceding findings, is approximately 3-foot higher elevation at the location the daycare building is proposed to be located than easterly lying single-family residential properties.

The record contains no evidence that pedestrian or vehicular traffic associated with the use will be hazardous or conflict with existing or anticipated traffic in the neighborhood.

7. The argument that Daycare II should be regulated as “commercial” rather than as “institutional” or “educational” within the landscape code—KCC 21A.16—goes no where. It has no effect on our interpretation of the landscape code because the Applicant meets or exceeds the landscape code’s most rigorous (Type I) standard in all respects.
8. Any portion of Finding Nos. 1 through 10 that may be construed as a conclusion is hereby adopted as such.

DECISION:

- A. The appeal is DENIED.
- B. The conditional use permit application of Alina Christ, as described in this hearing record by Exhibit Nos. 15 and 29A, is APPROVED; SUBJECT TO THE FOLLOWING CONDITIONS:
 1. The Applicant shall comply with all the terms and conditions of the required building permit, and any other permit(s) required to implement this proposal as approved.
 2. The proposed development shall be in accordance with the revised site plan (Exhibit No. 56), received May 17, 2000. Deviation from this site plan may require an approved modification.
 3. The use of the property as a “Daycare II” facility shall be limited to no more than 35 children and 9 employees per day, and only operate from 7:00 a.m. to 5:30 p.m. Monday through Friday, as stated in the application materials and faxed letter dated December 14, 1999 (Exhibit D-3 and 52). Any future expansion of this facility shall be subject to a new conditional use permit (CUP).
 4. The minimum number of parking spaces shall provide one parking space for each full-time employee and a minimum of two spaces for children drop-offs and pick-ups. These parking spaces shall be considered in addition to the required handicapped parking and shall be appropriately located and in accordance with all applicable provisions. The Applicant has stated in a faxed letter dated December 14, 1999, that the child care facility will employ six (6) full-time and three (3) part-time employees and have a total of 35 children attending the new facility. Therefore, the required number of off-street parking spaces is eight (8).
 5. The Applicant shall landscape the proposed facility as shown in Exhibit No. 29A in accordance with KCC 21A.16. Specifically, provide Type I landscaping within the designated landscape buffers along the north, east and south property lines. A ten-foot landscape buffer, with Type III landscaping, shall be established along the property frontage along 100th Avenue NE, except for the proposed access area. A landscaping plan shall be submitted and approved with the building permit application.

6. The Applicant shall submit, to the Land Use Services Division, the licensing information for the proposed facility from the State of Washington, within 45 days of this decision date, or this permit shall be considered null and void. Nothing in this permit shall excuse the Applicant from obtaining other required permits and/or approval.
7. This land use approval action for a Conditional Use Permit shall become null and void if not exercised by obtaining permits within four years from the transmittal date of this order.
8. Prior to the occupancy permit issuance, the Applicant shall install all landscaping as indicated by approved plans and shall post a landscape performance bond. The performance bond shall not expire until at least eighteen months past the date of planting/installation approval, and shall be in an amount equal to the full cost of materials and installation plus ten percent.
9. Landscaping shall be maintained as required by KCC 21A.16.
10. The gate, proposed to be located in the northeast corner of the property, shall be eliminated as a point of access for the subject property. Access for the daycare facility shall be restricted to the proposed commercial driveway extending eastward from 100th Avenue NE.
11. The play area, as shown on the approved site plan, shall be fenced with a minimum 4-foot fence to prevent children/use of the property from entering the required 20-foot landscape buffer and to increase screening.
12. Evergreen and deciduous trees planted in the 20-foot to 30-foot wide Type I landscape buffer shall be a minimum of five (5) feet in height and the east property line shall be fenced with a minimum 6-foot solid wood fence.
13. No more than 15 children shall be allowed during any outdoor recreation period.

ORDERED this 8th day of November, 2000.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 8th day of November, 2000, to the following parties and interested persons:

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NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) *on or before November 22, 2000*. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before November 29, 2000*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE OCTOBER 3 AND OCTOBER 16, 2000 PUBLIC HEARINGS ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L99AC010 – KIDS R' SPECIAL DAYCARE:

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Justin Abbott and Mark Mitchell. Participating in the hearing and representing the Applicant was Attorney David Tall. Participating in the hearing and representing the Appellant was Theodore Vander Wel. Other participants in this hearing were Sherry Shams, Bob McConnell, Chris Newman, Laurie Newman, Hermina Erlich, Ben Black, Mark Christ and Alina Christ.

The following exhibits were offered and entered into the record on October 3, 2000:

Exhibit No. 1	DDES staff report to the Hearing Examiner, dated September 19, 2000
Exhibit No. 2	DDES Application File No. L99AC010, filed on March 11, 1999
Exhibit No. 3	DDES Report & Decision, dated May 26, 2000
Exhibit No. 4	Site Plan (known as Exhibit No. 56), transmitted with Report & Decision on May 26, 2000
Exhibit No. 5	Notice & Statement of Appeal, received June 12, 2000, from W. Theodore Vander Wel.

Exhibit No. 6	Notice & Statement of Appeal, received June 12, 2000 from David Haynes
Exhibit No. 7	Declaration of Mailing and Disclosure of Witness List & Exhibits, received August 28, 2000
Exhibit No. 8	<i>WITHDRAWN on October 16, 2000</i>
Exhibit No. 9	Video narrated by Alina Christ, received August 28, 2000
Exhibit No. 10	Notice & Statement of Appeal, from previous Appeal File No. L00AP005, received January 21, 2000
Exhibit No. 11	Notice of Appeal, received January 24, 2000, from Sherry Shams, <i>et al</i>
Exhibit No. 12	Statement of Appeal, received January 31, 2000, prepared by W. Theodore Vander Wel on behalf of Sherry Shams, <i>et al</i>
Exhibit No. 13	Applicant's response (known as Exhibit 49) to the criteria in KCC 21A.44.040.
Exhibit No. 14	Applicant's clarification to application request (known as Exhibit 52)
Exhibit No. 15	Letter and plan set from Ben Black, Coastal Design Associates, Inc
Exhibit No. 16	Revised DDES Recommendations 8-12
Exhibit No. 17	Grand Opening Flyer showing hours of operation for Kids R' Special Daycare, submitted by Appellant
Exhibit No. 18	Color annotated site plan from 9/28/00--Abbott
Exhibit No. 19	DDES preliminary report to the Hearing Examiner, dated August 29, 2000
Exhibit No. 20	Pages A.0.2 and L.1.1. from Applicant's plan set, dated September 28, 2000
Exhibit No. 21	Colored map showing types of uses on NE 139 th street (Shams)
Exhibit No. 22a-22l.	Color copies of photographs (12 pp), submitted by Appellant (Shams)
Exhibit No. 23	Assessors map for SW 20-26-5 as annotated, submitted by Appellant
Exhibit No. 24	Video tape, submitted by Appellant
Exhibit No. 25	Audio tape, submitted by Appellant

The following exhibits were offered and entered into the record on October 16, 2000:

Exhibit No. 26	Hearing Examiner's Report and Decision on Supplemental Conditional Use Permit Appeal, Timberlake, DDES File No. L96AC022, dated July 2, 1999.
Exhibit No. 27	Exhibit No. 15 with attached photographs
Exhibit No. 28	Exhibit No. 20, as annotated by Mr. Black
Exhibit No. 29a.	Colored copy of landscape plan
Exhibit No. 29b.	Color copies of trees and other plantings (7 pages)
Exhibit No. 30	Zoning map
Exhibit No. 31	GIS map showing drainage basins
Exhibit No. 32	Drawings of Abbott and Newman (same page)
Exhibit No. 33	List of daycare operators
Exhibit No. 34	Daycare I present schedule

RST:sje
Cond use/L99AC010 RPT